

Remarks

The final Office action mailed April 29, 2008, and the advisory action mailed July 1, 2008, have been carefully reviewed. Applicant herein amends claims 1, 4, 9, 12-16 and 18-23. Applicant adds new claims 27-32. No new matter has been introduced.

The advisory action asserted that claims 1-11 constitute new matter. Applicant respectfully traverses. Amended claim 1 recites a processor configured to execute control logic so as to perform operations described, e.g., in paragraph [28] of Applicant's specification and in Fig. 6. Applicant's specification further states at paragraph [31] that "the disclosed methods may be implemented as computer-executable instructions recorded on a computer readable medium such as a floppy disk or CD-ROM or as specified hardware, such as an ASIC or FPGA." Notably, an ASIC and an FPGA are two examples of the claimed processor.

The advisory action further asserts that

Additionally, the use of the term "configured to" appears to have rendered some of the limitations of claim 1 optional. "The subject matter of a properly construed claim is defined by the terms that limit its scope. It is this subject matter that must be examined. As a general matter, the grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation." MPEP 2106 [underlined added]

Applicants also respectfully traverse this assertion. There is nothing "optional" about the recited configuration of claim 1. Unless a processor is configured to perform the recited operations, the processor will not be covered by the claim. Moreover, a processor is configured by including programming or other logic within the device that will cause the recited operations to be performed. The requirement for such programming or other logic in the processor limits the claim to a "particular structure." See *WMS Gaming, Inc. vs. International Game Technology*, 184 F.3d 1339, 1348 (Fed. Cir. 1999):

The structure of a microprocessor programmed to carry out an algorithm is limited by the disclosed algorithm. A general purpose computer, or microprocessor, programmed to carry out an algorithm creates "a new machine, because a general purpose computer in effect becomes a special purpose computer once it is programmed to perform particular functions pursuant to instructions from program software." *In re Alappat*, 33 F.3d 1526, 1545, 31 USPQ2d 1545, 1558 (Fed.Cir.1994) (en banc); see *In re Bernhart*, 57 C.C.P.A. 737, 417 F.2d 1395, 1399-1400, 163 USPQ 611, 615-16 (CCPA 1969) ("[I]f a machine is

programmed in a certain new and unobvious way, it is physically different from the machine without that program; its memory elements are differently arranged.”). The instructions of the software program that carry out the algorithm electrically change the general purpose computer by creating electrical paths within the device. These electrical paths create a special purpose machine for carrying out the particular algorithm. [footnote omitted]

The advisory action maintained the rejection of claims 1-26 under 35 U.S.C. § 103 based on U.S. Patent 5,951,651 (Lakshman et al., hereinafter “Lakshman”) in view of U.S. Patent 5,790,554 (Pitcher et al., hereinafter “Pitcher”). Applicants have further amended independent claims 1, 12, 18 and 23 to recite that identification of data clusters is received “from a client system processing clusters of data found in digital packets.” This feature is not taught by Lakshman or Pitcher. Accordingly, claims 1, 12, 18 and 23 are allowable. Claims 2-11, 13-17, 19-22 and 24-26 depend from one of claims 1, 12, 18 and 23 and are thus also allowable. New claims 27-32 depend from one of claims 1, 12 or 18 and are also allowable.

Respectfully submitted,

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